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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/552,770	10/12/2005	Hannes Floeschholzer	AT 030019	2207
24737 7590 06/16/2009 PHILIPS INTELLECTUAL PROPERTY & STANDARDS P.O. BOX 3001 BRIARCLIFF MANOR, NY 10510				
EXAMINER PELHAM, JOSEPH MOORE				
ART UNIT 3742		PAPER NUMBER		
MAIL DATE 06/16/2009		DELIVERY MODE PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/552,770

**Applicant(s)**

FLOESSHOLZER, HANNES

**Examiner**

Joseph M. Pelham

**Art Unit**

3742

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 May 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 2-6 is/are allowed.
- 6) ☒ Claim(s) 1 and 12 is/are rejected.
- 7) ☒ Claim(s) 7-11 and 13-17 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 October 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

The amendment filed 5/7/09 and RCE filed 6/9/09 are acknowledged. Claims 1-17 remain pending.

***Claim Rejections - 35 USC § 112***

Claims 1 and 12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Each of the claims recites "a substantial portion of said pressure means," which is intrinsically indefinite. Applicant is surely conversant with the use of "substantially" as a synonym for "approximately," as in "along substantially the entire length," or "heat is substantially evenly distributed." In the instant claims, "substantial" is a relative term. "A substantial portion of said pressure means" could be 3% or 93%, depending on either the physical dimensions or function of the pressure means. If 3% of the total length is sufficient for the device to operate then it is a "substantial portion."

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by US Pat. 2929907.

Again, the recitation of "depilation device" and "a storage space... for accommodating a store of depilation tape" refer strictly to the intended use of the device. US'907 discloses, at Figs. 1-4, col. 3, lines 20-39, and col. 4, lines 8-38, a housing 11, 12, 13, 14 with a storage space 16, a heating device 30 comprising a "plate-shaped heating wall designed for direct co-operation with the depilation tape," and "pressure means" 51 "opposite the heating device." The "pressure means" 51 can be considered "arcuately shaped" brackets in either of two respects: viewed in profile, either side of each pin has an arcuate shape since it curves to a point; alternatively, since the pins press against the "heating wall," the pressure necessarily imposes on the pin, to some extent, an arcuate shape. See discussion in Response to Arguments below.

***Allowable Subject Matter***

Claims 14-16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 2-11, 13, and 17 are allowed.

### ***Response to Arguments***

Applicant's arguments filed 5/7/09 have been fully considered but they are not persuasive.

The examiner notes initially that Applicant has mistaken the dependency of claims 14-16, which depend from rejected claim 12 and not claim 13.

Applicant asserts, at page 12 of the Response, that "a person of ordinary skill in the art *would not understand...* 'inclined needle-point members... to be arcuately shaped... as *substantially* recited in... claims 1 and 12'" (examiner's emphasis).

Applicant is reminded that a prior art reference *anticipates* a claimed invention if the invention disclosed by the prior art meets the claim limitations. Whether or not a person of ordinary skill in the art would "understand," in the instant case, that "inclined needle-point members" could be considered "arcuately shaped" is not germane to this determination.

Moreover, Applicant's use of "substantially" here is not understood, because the claims refer *identically* to an "arcuately shaped" object.

At page 13, Applicant states that the artisan "would not describe a square with rounded corners as an arcuately shaped object," [and] [c]ertainly a 'fine pointed pin' would not be understood to be arcuately shaped."

Objectively, just as the *corners* of such a "square" would be correctly described as arcuately shaped, one could thus describe a pin slightly curved by the application of pressure, or, viewed in profile, either side of a pin exhibiting an arcuate shape since it curves to a point.

Pages 13-15 are occupied with quotes of claims 1 and 12: "pressure means... arcuately shaped along a substantial portion of said pressure means," with emphasis on the term "substantial." As discussed above, "substantial" does not substantively limit the scope of the claim.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph M. Pelham whose telephone number is 571-272-4786. The examiner can normally be reached on M-F 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tu Hoang can be reached on 571-272-4780. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3742

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Joseph M. Pelham/  
Primary Examiner, Art Unit 3742  
6/13/09